

### **REMARKS**

This amendment is in response to the Official Action dated April 13, 2009. Claims 9 and 10 have been amended, no claims have been canceled, and no claims have been added; as such, claims 1-10 are now pending in this application. Claims 1 and 6-10 are independent claims. Reconsideration and allowance is requested in view of the claim amendments and the following remarks. These amendments add no new matter.

#### **35 USC § 101 Rejections**

Claims 9-10 have been rejected under 35 U.S.C. § 101 based upon the allegation that the claimed invention is directed to non-statutory subject matter, particularly a software application.

Applicant appreciates the Examiner's attention to the claims in this regard, and has modified these claims to recite computer-related article of manufacture claims, which are clearly a properly recited statutory category of invention.

Applicant respectfully requests the rejection of the claims under 35 U.S.C § 101 be withdrawn.

#### **35 USC § 103 Rejections**

Claims 1-10 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kelly et al (U.S. 6,952,521, hereinafter referred to as "Kelly '521") in view of Brodersen et al (U.S. 7,200,836, hereinafter referred to as "Brodersen '836"). Applicant respectfully traverses this rejection.

Claim 1 recites:

*An encoding controlling apparatus comprising:*

*offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter;*

***recording mode determining means** for determining whether a seamless connection is possible between the preceding chapter and the following chapter in order to set an initial value of said offset depending on an outcome of the determination;*

***offset updating means** for updating said offset in keeping with progress in encoding said video signal and said audio signal; and*

***recording controlling means** for giving an instruction either to start or to stop the encoding of said video signal and said audio signal in accordance with said offset.*

Kelly '521 **fails** to disclose, teach, or suggest "offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter."

Thus, Kelly '521 **fails** to disclose, teach, or suggest "offset updating means for updating said offset in keeping with progress in encoding said video signal and said audio signal; and recording controlling means for giving an instruction either to start or to stop the encoding of said video signal and said audio signal in accordance with said offset."

However, the Office Action alleges these features can be found in column 14 through column 16. This is wholly inaccurate.

Kelly '521 relates to methods and apparatuses for the editing and subsequent playback of edited audio/video data, and to edited recordings made by such methods and apparatuses. In particular, Kelly '521 discloses a means for producing an edited MPEG audio/video stream from first and second streams recorded in a transport-stream format normally intended for broadcast purposes. A bridge sequence is generated which recodes data from both of the original streams, in the region of the edit point. Padding packets are inserted in the elementary streams to adjust a continuity counter values so as to allow continuous decoding across the join between bridge sequence and second sequence proper. are constrained to certain types of coded pictures, and offset between time-bases is adjusted to avoid buffer overflow.

In summary, column 14 discloses the time-base used for the PCR/PTS/DTS timestamps will be discontinuous at the edit point. The correct offset between the two time-bases is given by

the difference between (i) the PTS of the last frame of the first sequence plus one frame period, and (ii) the PTS of the first frame of the second sequence.

In particular, pointers are stored identifying: (i) the point in the first stream where the last frame to be displayed ends and (ii) the point in the second stream where the first frame to be displayed starts. Also stored is (iii) the offset in presentation time between the two time-bases, given by PTS of last frame of first stream minus PTS of first frame of the second stream.

Column 16 discloses how the offset to use for updating the timestamps is given by the difference between the PTS of the first frame after the edit point and the last frame before the edit point, adjusted if necessary in the various steps above. Because not all frames are being displayed, there will be a gap in presentation time for both audio and video. The decoder should freeze the video and mute the audio (see MPEG-2 Conformance Specification, ISO/IEC 13818-4:1995, Section 2.3.3.1.1). If the timestamps were not updated, then the decoder would assume that the audio and video are continuous. This may result in buffer overflow and the loss of data.

Clearly, there is no mention of offset holding means by which to start encoding an audio signal earlier than a video signal upon recording of a chapter in Kelly '521.

Moreover, the offset updating means for updating said offset in keeping with progress in encoding said video signal and said audio signal is certainly not expressly disclosed in Kelly '521.

- **Therefore, Kelly '521 fails to disclose, teach, or suggest "offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter."**

In addition, the Office Action admits Kelly '521 fails to disclose, teach, or suggest *"recording mode determining means for determining whether a seamless connection is possible between the preceding chapter and the following chapter in order to set an initial value of said offset depending on an outcome of the determination,"* but alleges Brodersen '836 does. Again this is inaccurate.

Brodersen '836 does not remedy the deficiencies of Kelly '521, as the various features recited above are also absent from Brodersen '836. For example, Applicant's claimed features of

*“offset holding means for holding an offset equivalent to a time period by which to start encoding an audio signal earlier than a video signal upon recording of a chapter,”* are neither disclosed nor suggested by Brodersen ‘836.

Brodersen ‘836 relates generally to mass data storage and retrieval, and more particularly to apparatus and methods for authoring a digital versatile disk. A DVD authoring system in a processor-based system removes an author from consideration of the DVD Specification during authoring. The authoring system provides an authoring engine having an interactive graphical authoring interface, a data management engine, an emulator, a compiler, a multiplexer and a simulator. Using summary authoring data, the compiler builds a skeleton-form PGC layout structure comprising control PGC abstractions and router PGC abstractions. The compiler then resolves the PGC abstractions according to source-target connections. During playback on a DVD player, the PGC abstractions form elements in a connection-switching abstraction superstructure.

Brodersen ‘836 does not disclose an offset holding means by which to start encoding an audio signal earlier than a video signal upon recording of a chapter.

Additionally, there is no mention of a recording mode determining means for determining whether a seamless connection is possible in Brodersen ‘836.

Since even a combination of the relied upon references would still fail to yield the claimed invention, Applicant submits that a prima facie case of obviousness for claim 1 has not been presented. Applicant also notes that the offered combination appears to be a failed attempt to reconstruct the claimed invention in hindsight, as there is no basis to combine the means for editing digital video recordings of Kelly ‘521 with the means for performing low level DVD configurations function of Brodersen ‘836.

For the reasons stated above, claims 6-10 also are distinct from the Kelly ‘521 in view of Brodersen ‘836 (although claims 1 and 6-10 should be interpreted solely based upon the limitations set forth therein). Furthermore, at least for the reason disclosed above, claims 2-5 overcome the combination of Kelly ‘521 and Brodersen ‘836 because they depend on independent claim 1 and

thus incorporate the distinct features therein, as well as their separately recited patentably distinct features.

Accordingly, Applicant respectfully requests that the rejection of claims 1-10 under 35 U.S.C. § 103(a) as being unpatentable over Kelly '521 in view of Brodersen '836 be withdrawn.

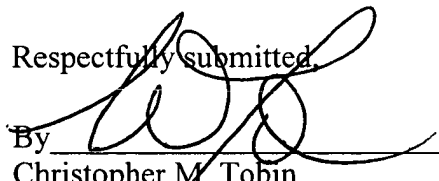
### **Conclusion**

In view of the above amendment and remarks, applicant believes the pending application is in condition for allowance.

This response is believed to be a complete response to the Office Action. However, Applicant reserves the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers. Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicant expressly does not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. SON-3123 from which the undersigned is authorized to draw.

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